

RECORDATION NO. 9829-C Filed 1425

JAN 31 1980 - 2 45 PM

INTERSTATE COMMERCE COMMISSION

ITEL

Rail Division

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

RECORDATION NO. 9829-D Filed 1425

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INTERSTATE COMMERCE COMMISSION

January 30, 1979

Honorable A.L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20432

Dear Madam:

No. 0-031A064

Date JAN 31 1980

Fee \$ 20.00

ICC Washington, D. C.

Enclosed for filing and recording by the Interstate Commerce Commission is the original, three counterparts, and two photocopies of the following documents:

Assignment dated December 7, 1979 among Bath & Hammondsport Railroad Company, Water Street, Hammondsport, New York 14840, Transkentucky Transportation Railroad, Inc., Kicaid Tower, Lexington, Kentucky, 40507, and Itel Corporation, Rail Division, Two Embarcadero Center, San Francisco, California, 94111;

Amendment No. 1 dated December 7, 1979 between Itel Corporation, Rail Division and Transkentucky Transportation Railroad, Inc. to that certain Lease Agreement dated March 20, 1978 between Itel Corporation, Rail Division and Bath & Hammondsport Railroad Company.

The foregoing Lease Agreement was filed with the Interstate Commerce Commission on November 9, 1978 at 3:30 P.M. and was assigned recordation number 9829.

Also enclosed are two checks in the amount of \$10.00 each, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing documents.

Please return all copies of the enclosed that are not required by the Interstate Commerce Commission to David Schwartz, Esq., of Sullivan and Worcester who will be delivering this letter on our behalf.

Sincerely,

Dave Biesemeyer

Dave Biesemeyer
Senior Counsel

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I.C.C.

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Enclosures
DB/jsf

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AMENDMENT NO. 1

INTERSTATE COMMERCE COMMISSION

Amendment No. 1 (the "Amendment") dated as of December 7, 1979, between Itel Corporation, Rail Division ("Itel Rail") as Lessor, and Transkentucky Transportation Railroad, Inc. ("Lessee"), a Kentucky corporation, to that certain Lease Agreement dated as of March 20, 1978, between Itel Corporation, Rail Division and Bath and Hammondsport Railroad Company ("the Lease").

WITNESSETH:

WHEREAS, Itel Rail and Bath and Hammondsport Railroad Company are parties to the lease;

WHEREAS, by an Agreement and Assignment bearing even date herewith but executed prior hereto the said Bath and Hammondsport Railroad Company assigned all its right, title and interest in and to the Lease to Lessee with the consent of Itel Rail; and

WHEREAS, the parties hereto desire to amend the Lease as follows;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Lease as follows:

1. All terms defined in the Lease shall have their defined meanings when used in the Amendment.

2. Sections 5.A. and 5.B. shall be deleted in their entirety and the following shall be substituted therefor:

"5.A. Except as otherwise provided, Lessee will pay all costs, expenses, fees, and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable for any repairs required for damage not noted at the time of interchange.

B.(i) Except as provided above, Itel Rail shall make or cause to be made, at Lessee's expense, such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Itel Rail, Lessee shall, to the extent it is capable of repairing Cars, perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Itel Rail. Itel Rail shall also make, at Lessee's expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs, to the extent Lessee is capable of making such repairs, to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to any Car without Itel Rail's prior written consent. Title to any such alteration, improvement, or addition shall be and remain with Itel Rail.

(ii) Itel Rail agrees to maintain, on behalf of Lessee, complete repair records for each of the Cars. Lessee agrees to provide Itel Rail with all records of repairs performed by Lessee if applicable. However, all charges incurred for labor and materials in connection with maintaining the Cars shall be for the account of the Lessee."

3. For the purposes of determining the rent, for the Cars under the Lease, the number "90 percent" in Section 6.A.(i) shall be deleted, and the number "80 percent" shall be substituted thereof.

4. Section 6.A.(ii) shall be deleted in its entirety and in lieu thereof, the following shall be substituted:

"6.A.(ii) In the event utilization exceeds 80 percent in any calendar quarter, Itel Rail shall receive an amount equal to the Itel Rail Base Rental plus an amount equal to 30 percent of the Payments earned in excess of the Itel Rail Base Rental. For the purposes hereof, Itel Rail Base Rental shall be an amount equal to the total payments for the calendar quarter multiplied by a fraction, the numerator of which is 80 percent and the denominator of which is the utilization for such calendar quarter. (The above determination of Itel Rail Base Rental insures that Lessee will, if utilization is greater, than 80 percent in any calendar quarter, receive 70 percent of all payments made by other railroads for use or handling of the Cars in excess of Itel Rail Base Rental)."

5. Section 6.C. shall be deleted in its entirety and in lieu thereof, the following shall be substituted:

"6.C. In the event utilization in any calendar quarter is less than 78 percent, or if at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the utilization cannot be equal to or greater than 78 percent, Lessee shall, at its option and within ten (10) days after the end of that calendar quarter, remit to Itel Rail a sum equal to any difference between Payments received by Itel Rail on behalf of Lessee and the Itel Rail Base Rental. If Lessee fails to remit to Itel Rail a sum equal to any difference between Payments received by Itel Rail on behalf of the Lessee and the Itel Rail Base Rental, Itel Rail may, at its sole option, and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as may be necessary to reestablish utilization at equal to or greater than 78 percent."

6. Except as expressly modified by the Amendment, all the terms and provisions of the Lease shall remain in full force and effect.

7. The Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts together shall be deemed to constitute one and the same instrument.

ITEL CORPORATION
RAIL DIVISION

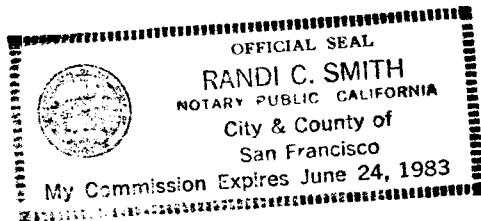
By Carl R. Layl
Title President
Date January 25, 1980

TRANSKENTUCKY TRANSPORTATION
RAILROAD, INC.

By [Signature]
Title President and General Manager
Date December 28, 1979

STATE OF California)
COUNTY OF San Francisco)

On this 25th day of January, 1980, before me personally appeared Carl N. Taylor, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, that the foregoing Amendment # 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Randi C. Smith
Notary Public

STATE OF Kentucky)
COUNTY OF Fayette)

On this 28th day of December, 1979, before me personally appeared William E. Hughes, to me personally known, who being by me duly sworn says that such person is PRESIDENT & GEN. MGR. of TRANSKENTUCKY TRANSPORTATION RAILROAD, INC., that the foregoing AMENDMENT was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joetta Bruner
Notary Public

My Commission Expires December 29, 1981